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REPORT

OF THE

BOARD OF PROPERTY,

RELATIVE TO THE ESTATE OF

JOHN NICHOLSON & PETER BAYNTON.

READ IN SENATE, FEB. 5, 1839.

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SURVEYOR GENERAL'S OFFICE,

February 5th, 1839.

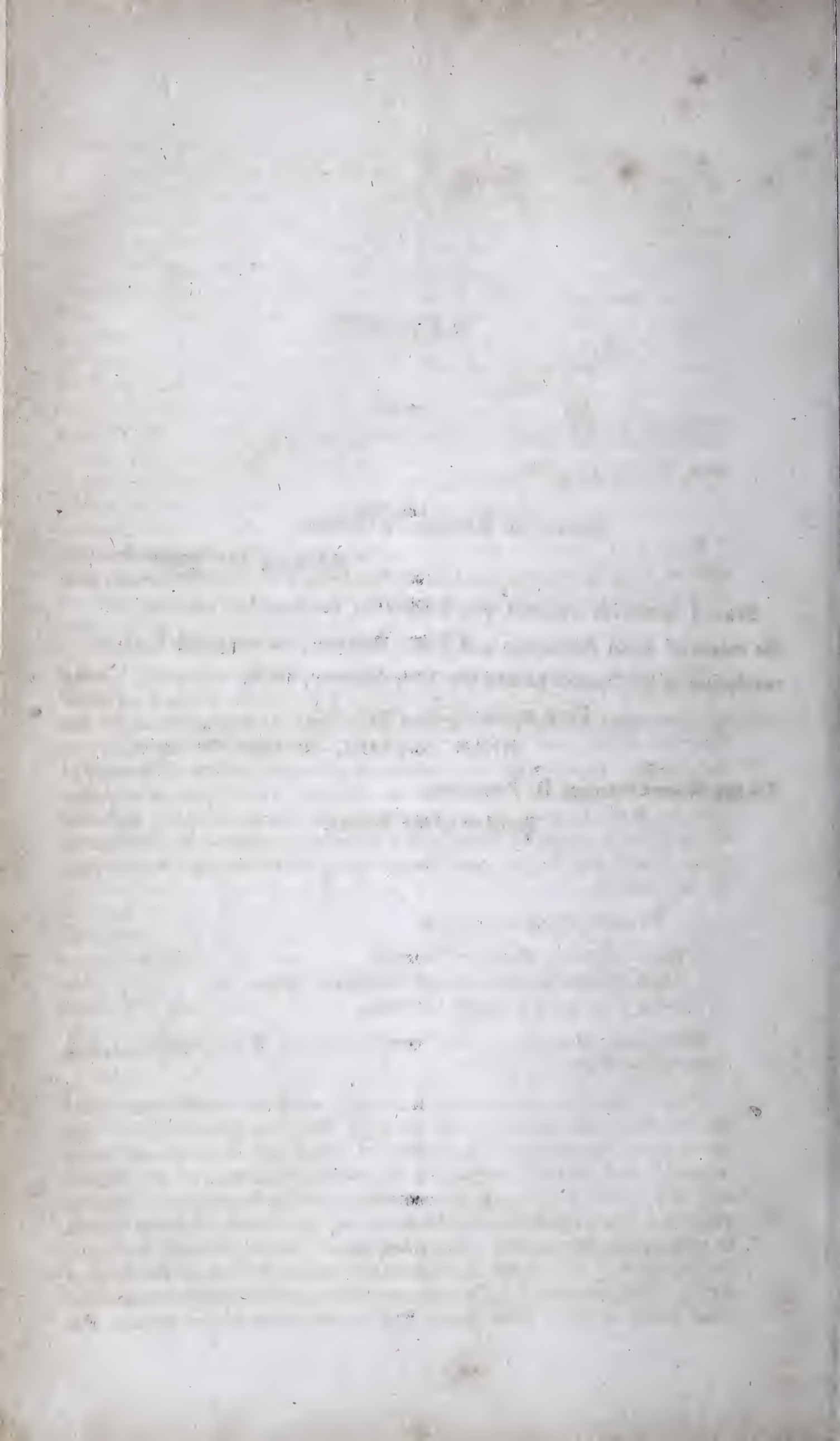
SIR—I herewith transmit you a report of the board in relation to the estate of John Nicholson and Peter Baynton, as required by a resolution of the Senate passed the 17th January, 1839.

Very respectfully, yours, &c.

JOHN TAYLOR, *Surveyor General.*

To the Hon. CHARLES B. PENROSE,

Speaker of the Senate.



REPORT.



HON. CHARLES B. PENROSE,

Speaker of the Senate.

SIR—The board in relation to the lien of the commonwealth, against John Nicholson and Peter Baynton, met in order to take into consideration the following resolution :

“IN THE SENATE, *January 17th, 1839.*

“*Resolved*, That the board created by an act of assembly, passed the eleventh day of April, 1825, entitled “An act for the sale of lands late the estate of John Nicholson and Peter Baynton, on which the State has a lien, and for other purposes,” be requested to report to the Senate, as soon as practicable, a full and detailed statement of their proceedings, under the said act, together with copies of any disclosures made to them by the agents of the commonwealth, and also of all reports made by them to the Governor, relative to said lands, under which any writ or process has been issued by him, for the sale of the same.”

Present at the meeting—

N. P. Hobart, *Auditor General*,
John Gebhart, *Secretary of the Land Office*,
John Taylor, *Surveyor General*.

The board, after taking into view the object of the resolution, beg leave respectfully to report :

That it has been their desire to comply with the requisitions of the resolution of the Senate with as little delay as possible ; but the services and attention of the clerks in the Land Department being required, and entirely devoted to the current business of the offices, and the board not being in possession of funds to enable them to employ a clerk specially for the purpose, have been hitherto unable to accomplish the object. They beg leave further to state, that from the minutes of the board, it appears that under the act of the 11th of April, 1825, various disclosures, reports, sales and compromises have from time to time been made, but on reference to the entries, it is

found that they alone, unconnected with books, papers and documents in the hands of the agents of the commonwealth and elsewhere, would not furnish any very important information to the Senate, in relation to the real state of the case, and would form a volume of several hundred pages. Some of the reports of the agents are exceedingly defective, and in many cases are nothing more than a list of warrantee names; others again, contain some information in relation to the situation and state of the title; but there are none so perfect in this respect, as those returned by William A. Lloyd, Esq. The board, however, in their examination and investigation of the title of Nicholson and Baynton, to the laws returned by him, did not, in making their decision, rely entirely on his written report. The agent himself (Mr. Lloyd) appeared before the board, and exhibited books, papers and documents, showing conclusively, that the title to the lands returned by him, was in John Nicholson and Peter Baynton, and as far as the board could ascertain, still liable to the lien of the commonwealth. But in order to complete the chain of title, in some instances, the documents produced, have to be taken in connection with other documents, books and papers, deposited in the office of the Auditor General, some of which are in boxes in the basement story of that building; others on file in the office of the Secretary of the Commonwealth, and others in the office of the Secretary of the Land Office. The books, papers and documents in the hands of William A. Lloyd, Esq., he claims to hold in his own possession, and the board had no authority, by virtue of the act of Assembly, to retain them.

Taking into view the complicated state of this business, and the various interests which appear to be involved in it, the Board feel no difficulty in giving it as their opinion, that the act of the 11th of April, 1825, does not furnish either the power or the means adequate to a fair and equitable adjustment of the case, so as to do justice to all concerned. The great length of time which has elapsed since the lien of the Commonwealth attached to the property of John Nicholson, has involved it in many difficulties. A very great proportion of these lands are no doubt improved, and have probably been held in possession by the settlers upwards of twenty-one years, and the residue in most cases probably sold for taxes. The heirs of John Nicholson have interests which they expect to have protected, and the Commonwealth is concerned not only to recover the debt due, but to protect her citizens in their just rights. To dispose of lands at auction, as contemplated by the act of 1825, would undoubtedly prejudice the interests of all concerned. In the first place, the property may not sell for an amount equal to the lien of the State;—in the second place, it would probably fall into the hands of speculators, who would, in order to make the most of the speculation, harass and oppress the settlers, and deprive them of the fruits of their labors; and in the third place, totally deprive the heirs of Nicholson of all hopes of realizing anything from a property which is estimated by some to be worth a million of dollars, even at

a reduced price. The case of the heirs of Nicholson, the Board conceives to be a peculiarly hard one. The important services rendered to the country by John Nicholson, in the Revolutionary struggle, by means of his wealth and financial skill, should, in the opinion of the Board, have been rewarded in a very different manner from what it has been. The lien of the Commonwealth against John Nicholson commenced about the year 1795-'6, as will be seen by the records of it in the office of the Auditor General and Treasury Department. Shortly after the lien attached to his property, he became embarrassed, and was imprisoned for debt, and when in prison his mind became impaired, rendering him disqualified to attend to the settlement of his accounts during the remainder of his life, which terminated in December, 1800. It is alleged by his heirs, that in consequence of this disability, claims which he held against the Commonwealth to a very considerable amount, were never placed to his credit. If this should be the case, and the claims should be found to be just, there could be no good reason for refusing to allow to the estate of Nicholson the credits to which it may be justly entitled.

In conclusion, the Board would respectfully suggest to the Senate the propriety of appointing a committee, whose duty it should be to ascertain the balance of debt due the Commonwealth from the estate of John Nicholson, after allowing all such credits as they may find the estate justly entitled to, with power to send for persons and papers, and with power also to adopt or devise some measures by which this complicated and difficult business may be brought to a speedy termination. Justice and the prosperity of the state demands an immediate close to be put to this lien of the Commonwealth, which has, for upwards of forty years, been hanging over more than a million of acres of the soil of the State, rendering the titles doubtful and uncertain;—thereby retarding the improvement and prosperity of the Commonwealth, and keeping all concerned in endless suspense. The Board have no hesitation in asserting, that it would be to the advantage of the Commonwealth to discharge the lien and lose the balance of the debt, if by so doing the titles of the lands would be relieved from all embarrassment; but they are inclined to think this would not be the result in all cases. Such a course would be attended with the greatest injustice to the heirs of Nicholson; for after having tied up their hands until the statute of limitations has interfered and other incumbrances have been created, the effect of such a proceeding would be that of bestowing their property upon those who have paid neither them nor the Commonwealth one cent for it. The attention of the Board, however, having been in some degree turned to the details of this subject, they feel free in stating that in their opinion, a Commissioner should be appointed on part of the State, and one on part of the heirs of Nicholson, at the joint expense of both, whose duty it should be to purchase in the lands at the sales of the Agents under the act of 1825, for the use of the Commonwealth, and proceed to collect into an office prepared for the purpose, in one of the public buildings at Harrisburg, all the books,

papers and documents of John Nicholson, relating to the titles of his lands, and cause a record to be made out, exhibiting the situation of the title in all cases; for which purpose they should be allowed to employ a clerk or suitable person to perform this duty, at the joint expense of the parties. And also, to proceed with all convenient speed to sell such lands as are unseated, to the best advantage, and compromise and sell to settlers in all cases where the lands are seated, and to make deeds on the payment of the purchase money into the Treasury, &c.

The board have taken the liberty of making these remarks and suggestions to the legislature, knowing that the subject is not generally well understood, and trusting that they may have some influence in bringing to a speedy, just and equitable conclusion, a business which as it is now regulated, is truly perplexing to all the officers concerned, as well as to individuals; and as has been already stated, retarding the improvements of the lands, and blighting the prosperity of the State.

All which is respectfully submitted.

NATH. P. HOBART, *Auditor General,*
JNO. GEBHART, *Secretary of the Land Office,*
JOHN TAYLOR, *Surveyor General.*

February 4, 1839.